

PREVAILED

Roll Call No. _____

FAILED

Ayes _____

WITHDRAWN

Noes _____

RULED OUT OF ORDER

HOUSE MOTION _____

MR. SPEAKER:

I move that Engrossed Senate Bill 29 be amended to read as follows:

- 1 Page 4, between lines 36 and 37, begin a new paragraph and insert:
- 2 "SECTION 4. IC-8-1-8.4 IS ADDED TO THE INDIANA CODE AS
- 3 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON
- 4 PASSAGE]:
- 5 **Chapter 8.4. Merchant Power Plant Certification and Siting**
- 6 **Sec. 1. As used in this chapter, "brownfield" has the meaning set**
- 7 **forth in IC 13-11-2-19.3.**
- 8 **Sec. 2. (a) As used in this chapter, "merchant power plant"**
- 9 **means an electric generating facility all or a designated part of**
- 10 **which is used for the production and sale of electric energy**
- 11 **exclusively into the wholesale power market or to other utilities,**
- 12 **energy service providers, or power marketers within or outside**
- 13 **Indiana. However, for purposes of sections 2 through 18 of this**
- 14 **chapter, the term does not include a plant all or a designated part**
- 15 **of which, before becoming a plant or a designated part of a plant**
- 16 **used for the production and sale of electric energy exclusively into**
- 17 **the wholesale power market, was used to produce electric energy**
- 18 **for sale to retail Indiana customers.**
- 19 **(b) The term does not include plants owned by any of the**
- 20 **following:**
- 21 **(1) A corporation organized and operating under IC 8-1-13.**
- 22 **(2) A nonprofit Indiana corporation most of whose members**
- 23 **are organized and operating under IC 8-1-13.**
- 24 **(3) A joint agency created and operating under IC 8-1-2.2.**

(4) A municipally owned utility.

Sec. 3. As used in this chapter, "need" means a commission finding supported by substantial evidence that:

(1) the regional power market has a projected need:

(A) for the type of capacity being proposed at or near the time the proposed merchant power plant is expected to become commercially operational; and

(B) that will not be met by other supply or demand side resources reasonably expected to be available at or near the time described in clause (A); and

(2) the merchant power plant being proposed is likely to be dispatched with sufficient frequency in the wholesale regional power market over the period of its expected operating life to recover its revenue requirement.

Sec. 4. As used in this chapter, "person" means any corporation, company, partnership, limited liability company, individual, association of individuals, or their lessees, trustees, or receivers appointed by a court.

Sec. 5. As used in this chapter, "petitioner" means a person that files with the commission a petition under this chapter to site a merchant power plant.

Sec. 6. Any person that owns, operates, manages, or controls a merchant power plant in Indiana is a public utility (as defined in IC 8-1-2-1(a)).

Sec. 7. (a) A person may not begin to construct a merchant power plant by significantly altering a site to install permanent equipment or structures unless the person files a petition with and obtains approval from the commission under this chapter.

(b) The commission shall issue a decision approving or denying a petition under the chapter not earlier than two hundred seventy (270) days after the filing of the petition.

(c) A person filing a petition under this chapter shall publish a notice of the filing in a newspaper of general circulation published in the county in which the proposed merchant power plant is to be located.

Sec. 8. (a) The commission may approve the siting of a merchant power plant if the commission determines that the siting of the merchant power plant is not adverse to the interests of the:

(1) citizens of Indiana; and

(2) citizens of the locality where the merchant power plant is proposed to be sited.

Sec. 9. The commission shall consider the following when acting upon a petition by a petitioner under this chapter:

(1) The need for the merchant power plant.

(2) The location of the merchant power plant.

(3) The ownership or transfer of ownership of the merchant power plant.

- (4) The management of the merchant power plant.
- (5) The financing of the merchant power plant.
- (6) The capacity of the merchant power plant.
- (7) The type and size of the merchant power plant.
- (8) The type of fuel used by the merchant power plant.
- (9) The merchant power plant's fuel supply arrangements and its effect on the reliability of Indiana's electrical system and the price and availability of the fuel for other uses in Indiana, taking into account the effects of other merchant power plants.
- (10) The merchant power plant's electric supply contracts.
- (11) The merchant power plant's effect on the electric and gas transmission systems serving Indiana.
- (12) The merchant power plant's effect on:
 - (A) water supplies and usage, taking into account the effects of other merchant power plants using the same or interconnected sources of water; and
 - (B) current users of the sources of water.
- (13) Local ordinances and area plans.
- (14) Oral and written testimony received by the commission under section 13 of this chapter.
- (15) The results of the study required under section 21 of this chapter.
- (16) Other factors that the commission considers relevant in making a determination required under this chapter.

Sec. 10. The petitioner must provide documentation to the commission that it has thoroughly considered the feasibility and economics of the following types of sites:

- (1) Brownfield sites that are isolated from populated areas.
- (2) Sites of existing or former utilities that can be replaced or repowered.
- (3) Other sites identified for power plant and heavy industrial development in local land use plans before the initiation of site selection for the merchant power plant.

Sec. 11. (a) As used in this section:

- (1) "department" refers to the department of natural resources; and
- (2) "water resource" has the meaning set forth in IC 14-25-7-8.

(b) When considering whether to approve a merchant power plant, the commission shall obtain a recommendation from the department regarding the merchant power plant's planned use of and its potential effect on the water resource.

(c) In making its recommendation, the department may do the following:

- (1) Rely on the merchant power plant's water resource assessment under subsection (d).

(2) Consult with and advise users of the water resource.

(3) Enter upon any land or water in Indiana to evaluate the effect of the merchant power plant on the water resource.

(4) Conduct studies to evaluate the availability and most practical method of withdrawal, development, conservation, and use of the water resource.

(5) Require metering or other reasonable measuring of water withdrawals and reporting of the measurement to the department.

(6) Engage in any other activity necessary to carry out the purposes of this section.

(d) A petitioner shall provide to the commission and the department an assessment of the proposed merchant power plant's effect on the water resource and its users. The assessment shall be prepared by a licensed professional geologist (as defined in IC 25-17.6-1-6.5) or an engineer licensed under IC 25-31-1. The assessment must include the following information:

(1) Sources of water supply.

(2) Total amount of water to be used by the merchant power plant for each source.

(3) Location of wells or points of withdrawal.

(4) Ability of the water resource to meet the needs of the merchant power plant and other users.

(5) Ability of the water resource to meet the future needs of the county in which the proposed merchant power plant is to be located.

(6) Alternative sources of water supply.

(7) Conservation measures proposed by the petitioner for reducing the merchant power plant's effect on the water resource.

Sec. 12. (a) If a person files a petition with the commission under this chapter or any other law for the siting of a merchant power plant, the person must establish proof of financial responsibility by filing one (1) or a combination of the following with the commission at a time, either before or after commission approval of the petition, that shall be determined by the commission:

(1) A fully funded trust fund agreement.

(2) A surety bond with a standby trust fund agreement.

(3) A letter of credit with a standby trust fund agreement.

(4) An insurance policy with a standby trust fund agreement.

(5) Proof that the merchant power plant meets a financial test established by the commission and equivalent to one (1) of the items in subdivisions (1) through (4).

(b) The amount of financial responsibility that a person must establish under this section shall be determined by the commission. In all cases, the amount must be sufficient, but not more than reasonably necessary, to:

1 (1) fully decommission the site and remove structures,
 2 equipment, and site hazards;
 3 (2) minimize the need for further maintenance and
 4 remediation; and
 5 (3) provide for reasonable, foreseeable, and necessary
 6 maintenance and remediation after closure of the merchant
 7 power plant for at least twenty (20) years;
 8 after the merchant power plant ceases operations.

9 (c) The commission may use:

10 (1) a trust fund agreement;
 11 (2) a surety bond;
 12 (3) a letter of credit;
 13 (4) an insurance policy; or
 14 (5) other proof of financial responsibility;
 15 filed under this section for the closure and post closure monitoring,
 16 maintenance, or remediation of a merchant power plant approved
 17 by the commission if the merchant power plant does not comply
 18 with closure or post closure standards established by the
 19 commission under subsection (d).

20 (d) The commission shall adopt rules under IC 4-22-2 to
 21 establish criteria for how money in a trust fund agreement, a
 22 surety bond, a letter of credit, an insurance policy, or other proof
 23 of financial responsibility provided by a merchant power plant
 24 meets the standards to decommission the merchant power plant
 25 under subsection (b)(1).

26 Sec. 13. (a) Not later than thirty (30) days after the petitioner
 27 has prefiled its testimony before the commission for the siting of a
 28 merchant power plant under this chapter, the commission shall
 29 conduct a hearing at a location in the county in which the merchant
 30 power plant is proposed.

31 (b) The commission shall send notice of the hearing by first class
 32 mail at least ten (10) days before the hearing to the following:

33 (1) Relevant state regulatory agencies, as determined by the
34 commission.

35 (2) Zoning and area plan authorities for the:

36 (A) county; and

37 (B) municipality, if any;

38 where the merchant power plant is proposed.

39 (3) Record owners of real property located within one-half
 40 (1/2) mile of the proposed site for the merchant power plant.
 41 However, at the commission's discretion, the commission may
 42 require notification to record owners of real property located
 43 within not more than two (2) miles of the proposed site in
 44 sparsely populated areas.

45 (c) The commission shall cause notice of the hearing to be
 46 published in a newspaper of general circulation in each county in
 47 which the merchant power plant is proposed. The publication

1 required under this subsection must occur once a week for two (2)
 2 weeks, with the second publication occurring at least fifteen (15)
 3 days before the date of the hearing.

4 (d) The commission shall accept written and oral testimony
 5 from any person who appears at the public hearing.

6 (e) The commission shall make a record of the hearing and all
 7 testimony received. The commission shall make the record
 8 available for public inspection.

9 **Sec. 14. Following the approval of a petition by the commission,**
 10 **the merchant power plant shall submit the following to the**
 11 **commission:**

12 (1) At least one (1) week before commencement of
 13 construction activities, a startup report that includes the:

14 (A) status of necessary permits; and

15 (B) expected in service date.

16 (2) A midpoint report, to be submitted at a time determined
 17 by the commission, that includes information concerning the:

18 (A) status of construction; and

19 (B) expected in service date.

20 (3) A testing notice at least two (2) weeks before any testing of
 21 the merchant power plant.

22 (4) At the time of the initial commercial operation of the
 23 merchant power plant, an in service notice that includes the
 24 following:

25 (A) Contracts for firm utility sales and contracts for firm
 26 sales to Indiana utilities.

27 (B) A summary of fuel contracts, including any pipelines
 28 involved in the transactions.

29 (C) Contingency plans, if any, detailing response plans to
 30 emergency conditions as required by state or local units of
 31 government, transmission owners, or any regional
 32 transmission grid operator.

33 (D) Certified dependable capacity rating.

34 (5) Not later than thirteen (13) months after the in service
 35 date, a first year report that includes the following:

36 (A) Summer and winter dependable capacity ratings.

37 (B) The annual capacity factor, including the summer and
 38 winter seasonal capacity factor.

39 (C) The hours of operation for each season.

40 (D) Total annual, peak day, and summer seasonal water
 41 usage and discharge.

42 (E) An itemization of transmission load restrictions or
 43 other operational restrictions incurred during the year.

44 (F) The number of employees employed by the merchant
 45 power plant.

46 (6) Other information requested by the commission.

47 **Sec. 15. Following approval of a petition for the siting of a**

1 merchant power plant by the commission, the petitioner must:

2 (1) notify the commission upon becoming an affiliate of any
3 regulated Indiana utility selling electricity at retail to Indiana
4 consumers;

5 (2) obtain prior commission approval for the sale of electricity
6 to any affiliate that is a regulated Indiana retail utility, except
7 for electricity purchased on the wholesale spot market;

8 (3) obtain prior commission approval of any transfers of
9 ownership of the merchant power plant or its assets;

10 (4) obtain commission approval before altering the capacity
11 or significantly altering the size of the merchant power plant;
12 and

13 (5) obtain commission approval before altering the type of
14 fuel used.

15 Sec. 16. After notice and hearing, the commission may withdraw
16 its approval for the siting of a merchant power plant if the
17 petitioner or subsequent owner or operator:

18 (1) fails to commence construction of the merchant power
19 plant within two (2) years of the date of the commission's
20 order of approval and is no longer diligently pursuing the
21 commencement of construction of the merchant power plant;
22 or

23 (2) fails to complete construction of the merchant power plant
24 within five (5) years of the date of the commission's order of
25 approval.

26 Sec. 17. (a) A person that receives commission approval of the
27 siting of a merchant power plant under this chapter or any other
28 law, or the subsequent owner or operator of the merchant power
29 plant for which siting approval is given, must operate the merchant
30 power plant in accordance with the commission's order of
31 approval.

32 (b) If the commission finds that the merchant power plant is not
33 operating in accordance with the commission's approval, the
34 commission may:

35 (1) order an investigation; and

36 (2) revoke the approval after the investigation, a hearing, and
37 the conclusion of the appeals process.

38 Sec. 18. (a) Notwithstanding IC 8-1-2.5-5, the commission may
39 not decline to exercise its jurisdiction under this chapter with
40 respect to a merchant power plant. However, the commission may
41 adopt rules under IC 4-22-2 to establish procedures for the exercise
42 of its jurisdiction under this chapter that differ according to the
43 type, size, or fuel resource of the merchant power plant.

44 (b) Whenever the commission substantially declines its
45 jurisdiction under IC 8-1-2.5 with respect to a merchant power
46 plant and its developer, the developer may not exercise the powers
47 conferred under IC 4-20.5-7-10.5, IC 5-11-10-1(c)(1), IC 6-1.1-8-1

or IC 8-1-8-1, or any other rights, privileges, or immunities conferred by law on electric utilities assigned service areas under IC 8-1-2.3 on account of the obligation of electric utilities to serve the general public without undue discrimination at regulated rates and charges.

(c) Except as provided by federal law, the commission has sole and exclusive jurisdiction over the siting and location of utility facilities, including merchant power plants.

Sec. 19. Information pertaining to:

(1) fuel arrangements or contracts; or

(2) electric sales and contracts;

of merchant power plants that are approved by the commission under this chapter or any other law is not a public record under IC 5-14-3.

Sec. 20. The commission shall direct the state utility forecasting group established under IC 8-1-8.5-3.5 to conduct an annual regional power market study to assess:

(1) the need for merchant power plant additions in the region;

(2) the effect of merchant power plants on the price of fuels used by merchant power plants;

(3) the effect of merchant power plants on the price of electricity;

(4) the effect of merchant power plant construction and operation on the deployment of demand side resources regionally and in Indiana;

(5) the amount of merchant power plant capacity contracted to Indiana electric utilities;

(6) the amount of merchant power plant capacity contracted to out of state marketers and electric utilities; and

(7) other issues the commission considers relevant."

Page 10, between lines 6 and 7, begin a new paragraph and insert:

"SECTION 6. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "commission" refers to the Indiana utility regulatory commission established under IC 8-1-1-2.

(b) Except as provided in subsection (c), a petitioner that files for commission approval of the siting of a merchant power plant before the effective date of this act is not subject to IC 8-1-8.4, as added by this act.

(c) A petitioner that files for commission approval of the siting of a merchant power plant before the effective date of this act is subject to:

(1) IC 8-1-8.4-6;

(2) IC 8-1-8.4-12;

(3) IC 8-1-8.4-15;

(4) IC 8-1-8.4-17;

(5) IC 8-1-8.4-18(b); and

(6) IC 8-1-8.4-19;

1 **all as added by this act. If a petitioner has filed for commission**
2 **approval of the siting of a merchant power plant and the**
3 **commission has not issued an order approving or denying the**
4 **petition before the effective date of this act, the petitioner is also**
5 **subject to IC 8-1-8.4-16, as added by this act."**

6 Renumber all SECTIONS consecutively.
 (Reference is to ESB 29 as printed February 22, 2002.)

Representative Adams T